

MINUTES OF MEETING

A meeting of the Chiropractic Physicians' Board of Nevada was held on Friday, May 12, 2006 in Room 4412E of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada 89101.

The following Board members were present for the roll call at 1:10 PM:

Stephanie Youngblood, DC, President
Margaret Colucci, DC, Vice President
Ian Yamane, DC, Secretary
Member, Donald H. Miner, DC
ElizaBeth Webb Beyer, RN, JD, Consumer Member

Member Dr. Curtis Potts and Consumer Member David Howard were not present. President Dr. Stephanie Youngblood determined that a quorum of the Board was present and called the meeting to order. Also present were Deputy Attorney General David Newton and CPBN Executive Director Cindy Wade.

Dr. Ian Yamane led the Pledge of Allegiance.

AGENDA ITEM 1 Dr. Miner moved for approval of the agenda. Dr. Youngblood seconded and the motion passed unanimously.

AGENDA ITEM 2 There was no public comment.

AGENDA ITEM 3 Dr. Miner moved to approve the April 21, 2006 meeting minutes with a change in the phrase "prosecutorial misconduct" to "professional misconduct" in Agenda Item No. 23. Dr. Yamane seconded and the motion passed unanimously.

AGENDA ITEM 4 Dr. Miner moved to approve the Board financial reports. Dr. Youngblood seconded the motion and it passed unanimously.

CONSENT CALENDAR

Dr. Miner moved for approval of items 5, 6, 7 and 8 under the Consent Calendar, as follows:

Agenda Item 5 **Approve** granting of Doctor of Chiropractic licenses to applicants who passed the May 10, 2006 examination and whose applications are complete, as follows:

Taylor G. Donovan, DC	Raymond H. Myung, DC
Jeffrey G. Hanks, DC	Thomas H. Rammel, DC
Brenda L. Hilby, DC	Amanda L. Richards, DC
Anthony E. Hunt, DC	Scott L. Sato, DC
Aaron M. Jorgensen, DC	David M. Streng, DC
Lige A. Lambeth, DC	

Agenda Item 6 **Approve** application for restoration of License No. B941, Jyh-Jye Shoung, DC.

Agenda Item 7 **Approve** application for restoration of License No. B307, Walter Scott Wiese, DC.

Agenda Item 8 **Approve** Executive Director reports:

- A. Status of Complaints Received
- B. Status of Current Probations
- C. Legal/Investigatory:
 - 1. Costs assessed since last report
 - 2. Costs assessed year-to-date
 - 3. Costs collected since last report
 - 4. Costs collected year-to-date

Ms. Beyer seconded and the motion passed unanimously.

ADMINISTRATIVE AGENDA

AGENDA ITEM 9 Applicant James Earle, DC, is not yet able to provide all of the material required by the Board to support his application for licensure. Dr. Miner moved that this matter be continued until the June meeting. Dr. Yamane seconded the motion and it passed unanimously.

AGENDA ITEM 10B ElizaBeth Beyer reported that Complaint 06-5 alleges a violation of NRS 634.208(2) for an IME conducted on a Nevada patient by an out-of-state doctor. It appears that the Board has no jurisdiction and would have to turn it over to the District Attorney for enforcement. Ms. Beyer moved to refer the matter to Deputy AG Richard Dreitzer for further review and that it be tabled for consideration at a later date. Dr. Colucci seconded and the motion passed unanimously.

AGENDA ITEM 10A Dr. Youngblood has reviewed Complaints 00-1, 00-2, 00-3, 00-4, 00-6, 00-7 and 00-18. They are six years old and concern release of records. The PI cases have long been resolved. Dr. Miner moved for dismissal of these complaints. Ms. Beyer seconded the motion and it passed unanimously.

AGENDA ITEM 11 Dr. Miner moved to deny Dr. Randy Mantz's request that if he should move out of state his probation would be terminated with the fine and costs due at that time. Second was by Dr. Yamane and the motion passed unanimously.

AGENDA ITEM 12 With respect to a request from Dr. Reza Ghassemi for termination of his probation to enable him to obtain malpractice insurance, ElizaBeth Beyer moved to remove Dr. Ghassemi from probation provided he pays the fine and costs within 30 days and the Board will revisit the matter of probation if he returns to Nevada. Dr. Youngblood seconded the motion which did not pass with Ms. Beyer and Dr. Youngblood in favor and Drs. Colucci, Miner and Yamane not in favor. Following discussion, Dr. Miner moved that if Dr. Ghassemi pays the fine and costs, the Board will look favorably upon termination of his probation. Dr. Colucci seconded and the motion passed unanimously.

AGENDA ITEM 13A Dr. Daniel Nightingale will be out of prison on July 5, 2006. He will spend five weeks in a halfway house and if he goes back into practice he may associate but he may not have a solo practice. He attended the required continuing education hours prior to his incarceration for renewal of his license for 2006. Dr. Miner moved that Dr. Nightingale be allowed to renew his license by payment of the annual renewal fee. Dr. Yamane seconded the motion and it passed unanimously.

AGENDA ITEM 13B The Nightingale hearing will not be held on June 3 because of Dr. Nightingale's inability to be present. Dr. Miner moved that Dr. Nightingale's attorney be contacted to establish a hearing date in late July or on a Monday, or their assurance that he will give the Board a standstill agreement to not practice until they are both available. Ms. Beyer seconded and the motion passed unanimously.

AGENDA ITEM 14 There was a brief discussion with respect to ElizaBeth Beyer's proposed protocols for Board hearings. Dr. Miner moved that no action be taken. Ms. Beyer seconded and the motion passed unanimously.

AGENDA ITEM 15A Dr. Yamane moved that the Board should not attempt to add acupuncture to the chiropractic scope of practice at this time and that this matter be referred to the professional association. Dr. Miner seconded the motion which passed with all in favor except Ms. Beyer who abstained because of her concern that the association represents only a small percentage of the profession.

AGENDA ITEM 15B Dr. Yamane explained that the Acutouch method corresponds with meridian therapy. He moved for approval of the Acutouch technique as being within the chiropractic scope of practice. Ms. Beyer seconded the motion and it passed unanimously.

AGENDA ITEM 15C Dr. Miner moved for approval of colonics as being within the chiropractic scope of practice. Ms. Beyer seconded and the motion passed unanimously.

AGENDA ITEM 15D Dr. Youngblood moved for approval of homeopathic substances as being within the chiropractic scope of practice. Ms. Beyer seconded and the motion passed unanimously.

AGENDA ITEM 15E Dr. Miner moved for approval of use of magnets as being within the chiropractic scope of practice. Dr. Colucci seconded and the motion passed unanimously.

AGENDA ITEM 15F More research is required to determine if naturopathy is within the chiropractic scope of practice. This matter will be addressed at a later date.

AGENDA ITEM 15G Laser therapy is another method of treatment that should be considered as being within the chiropractic scope of practice. More information is needed and this matter will be addressed at a later date.

AGENDA ITEM 19 Dr. Yamane reported on the events and topics of the recent FCLB/NBCE Annual Meeting which he and Dr. Potts attended.

AGENDA ITEM 20 There was no comment regarding the report on status of current investigations.

AGENDA ITEM 21 There was brief discussion with respect to the California and FCLB Model Disciplinary Guidelines.

AGENDA ITEM 22 The next DC and CA tests will be administered on August 9 and 11 respectively. There was nothing new to report from the CE and Legislative Committees.

AGENDA ITEM 23 The Board made note of a newspaper article regarding another northern Nevada licensee who has been indicted for felony income tax charges.

Cindy Wade requested input from Board members for the Spring/Summer Newsletter which will be published the week of June 5, 2006.

The contents of a flyer that was received anonymously were reviewed. The flyer contains several possible regulatory violations and the licensee offers laser therapy for weight loss and stop smoking which will be researched for a determination if this is within the chiropractic scope of practice. Dr. Yamane mentioned that the FCLB is currently developing a uniform chiropractic scope of practice.

AGENDA ITEM 24 The next meetings will be held in Reno on June 17 and in Las Vegas on July 21-22. Dr. Yamane will contact Michael Miscoe to determine if he can make his presentation to the Board in Las Vegas in July.

Dr. Youngblood commented that there are new X-ray guidelines that will be proposed to the chiropractic colleges and to the state boards for adoption. She will forward them to CPBN members for preview.

Dr. Yamane stated that Nevada was given a lot of kudos at the FCLB/NBCE Annual Meeting for the success of the very heated term limit issue with special credit given to Dr. Miner for his efforts in pushing through the changes. He also mentioned that Dr. Larry Davis has expressed to him his disappointment that the CPBN did not support his candidacy for NBCE District IV Alternate Director.

AGENDA ITEM 25 There was no public comment.

The meeting recessed at 4:53 PM and reconvened at 9:00 AM on Saturday, May 13, 2006 in Room 4401 of the Grant Sawyer Office Building at 555 E. Washington Avenue, Las Vegas, Nevada 89101.

The following Board members were present for the roll call at 9:00 AM:

Stephanie Youngblood, DC, President
Margaret Colucci, DC, Vice President
Donald H. Miner, DC, Member
Curtis Potts, DC, Member
ElizaBeth Webb Beyer, RN, JD, Consumer Member

Consumer Member David Howard were not present. Secretary Dr. Ian Yamane arrived at 9:05. President Dr. Stephanie Youngblood determined that a quorum of the Board was present and called the meeting to order. Also present were Deputy Attorneys General Richard Dreitzer and David Newton and CPBN Executive Director Cindy Wade.

AGENDA ITEM 16 Dr. Youngblood announced that DC applicant, Brenda Hilby, was present and the Board was ready to proceed with respect to possible approval of her application and possible action based on Case No. 05-18. DAG Richard Dreitzer commented that the complainant, Alexis Wesley, has evaded service of subpoena, therefore, he will have to rely on witnesses to speak to what has transpired. Mr. Dreitzer distributed copies of the Complaint so that everyone could read the charges.

Ms. Hilby explained that she performed soft tissue work as a massage instructor at the Academy of Healing Arts and a cavitation would occasionally occur but she did not perform adjustments.

Dr. Colucci recused herself because her office was involved in this matter.

Sheila Barger was sworn in as a witness and testified about her interview with Alexis Wesley.

Following questioning by the Board of Ms. Barger and further discussion with Ms. Hilby, Dr. Yamane moved to approve the application of Brenda Hilby and that she be granted a license to practice chiropractic. Dr. Youngblood seconded and the motion passed unanimously.

It is noted that the complainant, Alexis Wesley, arrived after the conclusion of the above matter.

AGENDA ITEM 17 Esther Rodriguez, attorney for Dr. Pasquale J. Laurito was present. Dr. Youngblood stated that the Board will proceed to address the matter of Case No. 05-15. Dr. Yamane recused himself from this matter due to previous dealings with Dr. Laurito.

Ms. Rodriguez requested a continuance because Dr. Laurito is currently out of the country. He will return on June 19 and will be ready to address this matter and to attempt to work out a settlement any time thereafter. July 21-22, 2006 was agreed on for a hearing date in this matter. Dr. Miner moved to grant a continuance in this matter. Dr. Potts seconded and the motion passed unanimously.

AGENDA ITEM 18 At 10:20 AM Dr. Youngblood announced that the matter of compliance with the June 20, 2003 Findings of Fact, Conclusions of Law and Decision in the Matter of James T. Overland, Jr., DC, License No. B526 would be addressed. Dr. Overland was not present, however, attorney Valner Johnson, was present to represent Dr. Overland. Dr. Overland's compliance monitor, Bryant Goldman, was also present.

DAG Dreitzer stated that he was not aware until this morning that Dr. Overland is represented by counsel. Mr. Johnson requested a continuance if there are matters to be addressed today that are not relevant to the Board's Order. Mr. Dreitzer assured that everything he will present today is relevant to the terms of Dr. Overland's probation.

Mr. Dreitzer explained that Dr. Overland has reported that his office was broken into and the very records that the Board's investigator had requested pursuant to the compliance issues were purportedly stolen along with his computers. Mr. Dreitzler said that the reported break-in of Dr. Overland's office appears suspicious and is currently being investigated by law enforcement. Mr. Johnson claimed that the records requested by Ms. Crown are protected under federal laws and probably cannot even be requested by Ms. Crown. Further, Mr. Dreitzer did not mention the break-in in his notice of this hearing.

Mr. Johnson's objections were duly noted. Dr. Miner stated that Dr. Overland was adequately noticed and had the opportunity to be present today. Dr. Miner moved to go forward today. The motion was seconded by Ms. Beyer and passed unanimously.

Mr. Dreitzer read the terms of the Board's June 22, 2003 Order with regard to the questions that have been raised about Dr. Overland's compliance.

Investigator Gina Crown was sworn in as a witness. She described her conversation with Linda McIlraith who alleged to her that she had observed a female person by name of Christ Olsen treating patients with therapies in Dr. Overland's office. Mr. Johnson objected because Linda McIlraith and Chris Olsen were not present to testify. Mr. Johnson was overruled because hearsay is allowed in an administrative hearing.

Ms. Crown testified that on January 27, when she followed up at Dr. Overland's office on the information provided by Linda McIlraith, she observed a person by the name of Al Olsen treating patients with therapies in Dr. Overland's office. Mr. Johnson objected to the "warrantless search" that was conducted. He was informed that this is not a criminal proceeding. Ms. Crown was told that Mr. Olsen was a "CA in training."

Following a break, the hearing resumed at 10:52 AM. Gina Crown was excused as a witness. It was noted that Dr. Overland may be re-noticed regarding Ms. Crown's testimony. The next meeting will be held in Reno on June 17 and everyone may be re-noticed for that meeting.

Bryant Goldman was sworn in as a witness. He testified as to his responsibilities as Dr. Overland's compliance monitor. He has provided approximately ten reports to the Board with respect to Overland's compliance. In response to Mr. Dreitzer's questions, Dr. Goldman stated that he has no knowledge of allegations of unregistered persons performing chiropractic services in Dr. Overland's office or of allegations that Dr. Overland has had sexual relations with a patient. Mr. Johnson objected to this subject being addressed. Dr. Goldman stated that he was aware of the alleged break-in of Dr. Overland's office because Dr. Overland had called him the same day to inform him of the break-in. He stated that Dr. Overland has been in the process of selling his practice since last October. He was present in Dr. Overland's office yesterday for a meeting regarding the sale of his practice and there was discussion about the break-in. He learned of the criminal investigation into the matter from Mr. Dreitzer.

Mr. Johnson elicited from Dr. Goldman that no one from the Board has ever contacted him to discuss Dr. Overland's compliance. Dr. Goldman stated that Dr. Overland has complied with all of the provisions of the Board's Order and that his cooperation has been phenomenal and has probably been his most compliant client. Dr. Goldman testified that he had not been noticed of today's hearing but Dr. Overland had told him about it. Dr. Goldman contacted Cindy Wade who referred him to Mr. Dreitzer who invited him to attend the hearing. He called Gina Crown but she did not return his call. Upon questioning from Mr. Johnson regarding Dr. Overland's compliance with the specific requirements of the Order, Dr. Goldman stated that he assumed that Dr. Overland has repaid the Board for its costs and paid the fine, and Dr. Overland hired Dr. Goldman as his compliance monitor. Dr. Overland told Dr. Goldman that the results of the SPEC test had been sent to the Board as well as the record keeping seminar requirements and he assumed that they had been completed. He also assumed that Dr. Overland had taken and passed the Board's Law test.

Upon questioning from Mr. Dreitzer, Dr. Goldman described one instance when his report was not timely received by the Board. He agreed that it would be of concern to him if there were unregistered individuals in Dr. Overland's office performing chiropractor's assistant tasks or chiropractic services, if there was evidence that Dr. Overland was having sexual relations with a patient, or if there were allegations of criminal conduct involving falsification of police reports by Dr. Overland. Mr. Johnson objected to the questions.

Dr. Yamane asked Dr. Goldman how he monitors activities such as supervision of employees, hiring of unlicensed chiropractor's assistants and having sexual relations with a patient. Dr. Goldman answered that there is no way he can be there 24 hours a day. He did arrange with Dr. Overland to review the registration paperwork of the CAs. He stated that he had not reviewed the applications of Dr. Overland's new employees but when he asked Dr. Overland if a person is certified he was told yes.

Dr. Miner asked Dr. Goldman if he did any direct follow-up on any of the issues where he assumed Dr. Overland was in compliance. Dr. Goldman answered that he has seen certificates of the majority of Dr. Overland's employees. He did not follow up with the Board on registration of Dr. Overland's new hires or payment to the Board of the fine and costs. He stated that he assumed that if Dr. Overland had not complied with the payment requirements, the SPEC score, etc., that he would have been notified by the Executive Director. He stated that when he visited Dr. Overland's office he would request and would be shown the certificate of any new employee.

Dr. Goldman stated that he has submitted approximately ten written reports on Dr. Overland's compliance to the Board. His partner visited Overland's office possibly twice per week for the first several months and weekly the rest of the first year and took part in writing the reports. Some visits were announced and some were not. He did not inspect Dr. Overland's office until after his partner left in June, 2004. Dr. Goldman testified that he has physically visited Dr. Overland's office at least 20 times. He stated that there were times when he pulled patient files and did not find SOAP notes written in the patient records and that he corrected this with Dr. Overland.

Dr. Youngblood stated that when Mr. Goldman's second report was not received it was discovered that his secretary had logged in for semi-annual reports rather than quarterly reports. This was corrected as soon as Dr. Overland received his cease and desist letter.

Dr. Goldman testified with respect to his and his former partner's credentials. He is a graduate of Logan College of Chiropractic and has been in business since 1998 involved in corporate compliance in all health care fields. Dr. Colucci asked him if he can provide the names of all of the persons working for Dr. Overland as chiropractor's assistants since he has been monitoring Dr. Overland, to which he answered no, that there have been two or three new people hired since last October. Dr. Overland told him that they would apply to be registered but he does not know if they actually did get registered with the Board, and he understands that one or two persons have quit. He estimated that there have been six persons who physically worked on patients since he began monitoring Dr. Overland's practice until last October. He knows of a husband and wife who have already quit. It is his understanding that they both applied for certification. The husband, Al, left the day Gina Crown showed up to inspect the office supposedly because he didn't want to get Dr. Overland in trouble because they were unable to find the paperwork or the cancelled check to show that he was registered with the Board because his main concern was about getting the documents completed for implementation of the corporate compliance manual and zero tolerance for fraud policy, and do the final training within the next two weeks.

Dr. Goldman stated that Dr. Overland paid his company \$200 per hour for the compliance monitoring.

Dr. Miner asked if he could provide to the Board his partner's detailed notes as well as his own and Dr. Goldman replied that he could do so within two weeks. Dr. Goldman testified that the majority of the violations that he has found over the course of his compliance monitoring have been record keeping and also billing issues in that he does not bill for some of the services he provides. When asked what steps he took to assure that employees have registered with the Board, Dr. Goldman replied that he would ask to see their certificates. Dr. Colucci pointed out that employees must work for six months after training before they are eligible to take the test which they must pass to be issued a certificate. Dr. Miner admonished Dr. Goldman for making assumptions and accepting Dr. Overland's word for things that he should have followed up on.

Dr. Potts ascertained from Dr. Goldman that he was sure that no employees have worked for Dr. Overland for more than 30 days without being registered and that the services that were not billed for were all document in the patients' records.

ElizaBeth Beyer asked if Dr. Goldman could provide the Board with a printout of everything pertaining to Dr. Overland that is in his laptop computer by the end of the day to which Dr. Goldman replied that would be impossible but he could provide it by the next Monday.

Mr. Dreitzer directed Dr. Goldman to the provisions in the Board's Order indicating that Dr. Overland had been disciplined for falsifying patient records by fabricating SOAP notes. Dr. Goldman agreed that this indicates that Dr. Overland has provided false information to the Board in the past, however, he has not looked at this document for a long time. He agreed with Mr. Dreitzer that this document is his authority for the monitoring of Dr. Overland's compliance. Mr. Dreitzer ascertained from Dr. Goldman that he became aware that the former employee, Al, had left Dr. Overland's employ because he did not want to get him into trouble when he was in Dr. Overland's office the previous day before this hearing. He indicated that he will follow up with Dr. Overland as to the details of Al's employment and that the information gathered by Gina Crown would be useful.

Dr. Miner asked Dr. Goldman if Dr. Overland has x-ray equipment in his office and if he takes x-rays. Dr. Goldman responded yes. Dr. Miner asked if he had reviewed any x-rays in the process of reviewing Dr. Overland's records. Dr. Goldman replied that he had not done so in the last year but has done so in the last two years. In response to Dr. Miner's question if he had observed discrepancies in Dr. Overland's x-rays, Dr. Goldman replied that he had seen artifacts in the films. When asked if he followed up on this with Dr. Overland, he answered that he had found out that "this is the norm within the x-ray world any more, you leave the pants on and you take an x-ray." Dr. Miner asked if it is his testimony under oath that as a compliance monitor he tolerates inadequate x-rays with artifacts such as zippers, belts, etc. Dr. Goldman stated that this is not the standard that he learned at Logan College but when you walk into the majority of offices that have x-ray or an x-ray facility a lot of times you will find artifacts, it is common in this day and age. Dr. Miner asked if Dr. Goldman could provide a list of chiropractors for whom he has been a compliance monitor including addresses and phone numbers. Dr. Goldman replied he can provide the list by Monday.

ElizaBeth asked if the Board could take a brief look at the Overland records in Dr. Goldman's computer today. She specifically asked to see the records for February, 2006. Dr. Goldman replied that he did not visit Dr. Overland's office in February, 2006, nor was he there in March, 2006. Ms. Beyer asked for the records for November, 2005 which Dr. Goldman was not able to provide but he did find that he visited Dr. Overland's office on February 10, however, his notes are hand-written and were not entered into his computer.

original billing, on the next Monday. Dr. Goldman stated that his notes are usually destroyed after they have been entered into the computer but he may have some laying around.

Dr. Youngblood stated her understanding that this matter will be reconvened at the Board's meeting in Reno on June 17.

Dr. Miner stated that because of the inadequacy of the records of the monitoring by the compliance officer and his role in this matter, he is unable to determine if Dr. Overland is compliant, whether or not the compliance officer can recall what his role is with regard to the authorizing document and this is a sham in his view. He moved that the Board bring in another compliance officer that this Board trusts to be present in Dr. Overland's office with our investigator on a one day in-and-out to review the full breadth of Dr. Overland's records and make an appropriate assessment as to whether or not Dr. Overland is in compliance. Dr. Yamane clarified that this is a motion and the Board will no longer have Dr. Goldman stay on as a compliance officer for Dr. Overland, a new compliance officer will be hired to assist our investigator and do a one-day evaluation. Dr. Miner responded that Dr. Overland is required to pay Dr. Goldman, but he feels that on the Board's own, a compliance officer that the Board knows and trusts should be brought in, in the presence of the compliance officer and our investigator; even though he (Dr. Miner) would be the first one to support firing the present compliance officer for failure to live up to the Board's expectations, however, we should leave him on so he can work his way through this and see the errors of his ways. Dr. Yamane seconded the motion and it passed unanimously.

Dr. Youngblood confirmed that between now and June 17, 2006 this Board's investigator and a compliance officer approved by this Board will make a visit to Dr Overland's office for an entire day to get the status of his compliance. The second compliance officer's expenses will be paid by the Board. The hearing was adjourned.

AGENDA ITEM 10B Mr. Newton asked that the Board revisit Complaint 06-5. Mr. Dreitzer cited a Nevada decision that has relevance to this matter which was discussed, as well as a Michigan decision in a similar case. Ms. Beyer recommended that it would be better to look into the Michigan case rather than arguing the constitutionality of the statute. After further discussion, Dr. Miner moved that this matter be referred to the District Attorney. Dr Potts seconded and the motion passed unanimously.

There was no further business and no public comment and the meeting was adjourned.

Approved: June 17, 2007

Ian K. Yamane, DC, Secretary